Nos. 14-1541, 14-1543, 14-1545 & 14-1548

In the
United States Court of Appeals
for the Eighth Circuit

BELCOURT PUBLIC SCHOOL DISTRICT and ANGEL POITRA,

Plaintiffs-Appellants,

v.

ELLA DAVIS and TURTLE MOUNTAIN TRIBAL COURT,

Defendants-Appellees.

BELCOURT PUBLIC SCHOOL DISTRICT and CHRIS PARISIEN,

Plaintiffs-Appellants,

v.

MIKE AND JUDY NELSON, on behalf of their Minor Child, S.N., and
TURTLE MOUNTAIN TRIBAL COURT,

Defendants-Appellees.

BELCOURT PUBLIC SCHOOL DISTRICT, ROMAN MARCELLAIS and
SCHOOL BOARD MEMBERS FOR THE BELCOURT PUBLIC SCHOOL DISTRICT,

Plaintiffs-Appellants,

v.

BRUCE ALLARD, MARTIN DESJARLAIS, JEFF LADUCER, CHAD MARCELLAIS,
ROBERT ST. GERMAINE and TURTLE MOUNTAIN TRIBAL COURT,

Defendants-Appellees.

BELCOURT PUBLIC SCHOOL DISTRICT, ROMAN MARCELLAIS and
SCHOOL BOARD MEMBERS FOR THE BELCOURT PUBLIC SCHOOL DISTRICT,

Plaintiffs-Appellants,

v.

STEVE HERMAN and TURTLE MOUNTAIN TRIBAL COURT,

Defendants-Appellees.

(CONTINUED ON INSIDE PAGE)

Appeal from the United States District Court
for the District of North Dakota - Bismarck,
Nos. 4:12-cv-00114, 4:12-cv-00116, 4:12-cv-00117 & 4:12-cv-00118.
The Honorable **Ralph R. Erickson**, Judge Presiding.

BRIEF OF DEFENDANTS-APPELLEES ELLA DAVIS, MIKE AND JUDY NELSON, BRUCE ALLARD, MARTIN DESJARLAIS, JEFF LADUCER, CHAD MARCELLAIS, ROBERT ST. GERMAINE and STEVE HERMAN

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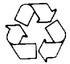

SUMMARY OF THE CASE & REQUEST FOR ORAL ARGUMENT

The Belcourt Public School District ("School District"), falls under the umbrella as a political subdivision of the State of North Dakota, and operates schools within the Turtle Mountain Indian Reservation ("Reservation") pursuant to a Plan of Operations, which the School District freely enter into with the Turtle Mountain Band of Chippewa Indians ("Tribe"). (Plan of Operations 2009, App. 42, 47). Under the Plan of Operations it is the School District's duty to educate all children within the Reservation. The Appellees filed claims against the Appellants in the Turtle Mountain Tribal Court ("Tribal Court"). After the Tribal Court of Appeals ruled Tribal Court has jurisdiction over the School District, Appellants brought declaratory judgment actions in the District Court on the issue of tribal court jurisdiction. Defendants Tribal Court and the Nelsons did not plead or otherwise appeared to defend the declaratory judgment action. The District Court denied Plaintiffs/Appellants' motion for default judgment against the Defendants in the *Nelson* action, and later denied Plaintiffs/Appellants' motions for summary judgment in all the above-consolidated cases. The District Court correctly held that the Tribal Court has jurisdiction over the School District and its employees.

Given there are four (4) cases in this brief, Defendants/Appellees request 25 minutes; should the Court order oral arguments.

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CORPORATE DISCLOSURE STATEMENT

Defendant-Appellee is not a corporation and has no corporate affiliation.

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STATEMENT OF THE CASE

All Defendants/Appellees, are enrolled members of the Turtle Mountain Band of Chippewa Indians ("TMBCI" or "Tribe"). Plaintiff/Appellant, the Belcourt Public School District ("School District"), falls under the umbrella as a political subdivision of the State of North Dakota.

Both Plaintiff/Appellant Poitra and Defendant/Appellee Davis were employed by School district. Plaintiff/Appellant Poitra who was not Defendant/Appellee Davis' supervisor at the time, wrote a letter defaming Davis. The letter was put in Davis' personnel folder. Davis filed suit in Turtle Mountain Tribal Court ("Tribal Court") alleging slander and libel.

Defendants/Appellees Mike and Judy Nelson's minor child attends the Belcourt School operated by the School District. Plaintiff/Appellant Chris Parisien disciplined Nelson's minor child. Nelson's filed suit in Tribal Court alleging Parisien used improper force, amounting to cruel and unusual punishment. The Nelson's failed to make an appearance at the federal district court level and the School District motioned for and filed for default judgment with the clerk of court.

Defendants/Appellees Bruce Allard, Martin Desjarlais, Jeff Laducer, Chad Marcellais, and Robert St. Germaine, are bus drivers for School District. The

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School District failed to advertise a promotion for which these bus drivers were qualified. All of the Defendant/Appellee bus drivers filed suit in Tribal Court alleging they should be given a similar promotion with back pay.

Defendant/Appellee Steve Herman, a bus driver for the School District, filed suit in Tribal Court alleging he was wrongfully terminated.

The Turtle Mountain Tribal Appellate Court ruled that the lower Tribal Court has jurisdiction over this matter. The School District sought to have this action moved to federal court and dismissed in their favor. The federal district court affirmed that Tribal Court has jurisdiction over the School District and its employees, all of whom are enrolled members of the Tribe, working and residing within the exterior boundaries of the Turtle Mountain Indian Reservation ("Reservation"), teaching children that are enrolled members of the Tribe.

In 2006 and again in 2009, the School District and the Tribe entered into consensual agreements to mutually share the responsibility for educating Indian students residing on or near the Reservation. (see Plan of Operations, 2006 and 2009, Apps. 42, 47). In both agreements, the Tribe and the School District agreed to share the responsibility for educating students in the Belcourt Public School District. Id. The Tribe and School District also agreed to comply with all relevant employment provisions of "lawfully applicable Federal, Tribal, and State

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statutes, regulations, ordinances, and resolutions." (Plan of Operations 2009, App. 42, 47). As set forth above, the School District failed to follow the recognized laws and ordinances of the Tribe and the agreements with the Tribe thereby failing to afford all Defendants/Appellees their employment rights. The people in this action and the subject matter itself are tribal in nature and jurisdiction must remain with the Tribal Court.

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SUMMARY OF THE ARGUMENT

A state political subdivision, who's entire membership consists of tribal members, employing and educating other tribal members within the exterior boundaries of an Indian reservation may be subject to Tribal Court jurisdiction when it enters into a consensual agreement with a sovereign tribal nation and the agreement requires the state political subdivision to perform its contractual obligations entirely on tribal lands. The federal district court has determined that the *Montana* exceptions do not apply in this matter. However, the Federal District Court stated,

> Even if *Montana* applies to the circumstances in this case, the Court would reach the same conclusion. *Montana* grants tribal courts the power to exercise jurisdiction over the activities of nonmembers who enter consensual relationships with tribes ir its members. ... The facts of this case fit squarely within the circumstances identified by the Supreme Court in *Montana*.

Finally, the School District has not yet exhausted its Tribal Court remedies as required in *Iowa Mut. Ins. Co*. This is especially important in the Nelson case. The federal district court judge, the Honorable Daniel L. Hovland, correctly denied the motion for default judgment. Even if the motion for default judgment would have been granted, the default judgment would have been void, pursuant to *Gustafson*. The School District failed to exhaust its Tribal Court remedies and the

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U.S. Supreme Court has held a federal court should not take jurisdiction until a tribal court can determine its own jurisdiction. *Strate*.

ARGUMENT

I. Default Judgment Regarding Defendants/Appellees Nelsons.

With regards to Defendants/Appellees Nelsons, the School District applied for entry of default judgment with the clerk of court against the Nelsons pursuant to Fed. R. Civ. P. 55(a) ("Rule 55(a) & (b)"), and the clerk for the federal district court entered a default judgment against the Nelsons for failing to appear and defend. The School board then filed a motion for default judgment with the federal district court under Rule 55.

The federal district court correctly denied the School District's motion for default judgment. Add. 004 (citing *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 128 (2d Cir. 2011)). The district court reasoned entry of default judgment is first required under Rule 55(b) before obtaining a default judgment for a sum certain; and a default judgment is not entered automatically against a defaulting party. *Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781, 783 (8th Cir. 1998). In the *Nelson* case, the district found the School District was not seeking a "sum certain," but instead the School District was seeking declaratory relief. The district court interpreted Rule 55 when no sum certain is determined, then the

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requirement of requesting default judgment by the clerk does not apply. The party asking for default judgment must apply to the court directly. *W. World Ins. Co., Inc. v. Czech*, 275 F.R.D. 59, 62 (D. Mass. 2011). This Court should not fault the Nelsons for failing to follow the federal rules of civil procedure when the School District fails to follow the same rules.

II. Tribal Court Jurisdiction.

Tribal jurisdiction over non-members is a federal question answered by federal law. *Nat'l Farmer's Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985). While the scope of Tribal civil jurisdiction over nonmembers is "ill-defined", "[t]he controlling principles are broad and abstract and must be carefully applied to the myriad of factual scenarios they govern. Determining the contours of civil tribal jurisdiction and the boundaries of tribal sovereignty requires consideration of the historical scope and tribal sovereignty and the evolving place of the tribes within the American constitutional order, careful study of precedent, and ultimately a 'proper balancing' of the conflicting interests of the tribes and nonmembers." *Attorney's Process & Investigation Services, Inc. v. Sac and Fox Tribe of Mississippi in Iowa*, 699 F.2d 927, 934 (8th Cir. 2010).

As a general rule, "absent express authorization by federal statute or treaty, tribal jurisdiction over the conduct of nonmembers exists only in limited

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circumstances." *Strate v. A-1 Contractors*, 520, U.S. 438, 445 (1997). The limited circumstances were explained in the landmark case, *Montana v. United States*, 450 U.S. 544 (1981). Those are known colloquially as the "*Montana* exceptions," discussed *infra*. The District Court has determined that the framework set forth in *Montana* does not apply to the underlying claims in this case and that tribal court has jurisdiction over this matter. However, the District Court also found that even if *Montana* does apply to the circumstances of the case, the Court would still reach the same conclusion.

III. Defendants/Appellees Facts Under the 2006 and 2009 School District and TMBCI Consensual Agreements Fits Each of the Montana Requirements.

In *Montana*, the United States Supreme Court carved out two categories where tribal civil jurisdiction may be exercised over non-members where Congress has not expressly authorized tribal jurisdiction: (1) when a non-member has entered into a consensual relationship with a tribe or its members through commercial dealing, contracts, leases, or other arrangements; or (2) when the non-member's conduct "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana v. United States*, 450 U.S. 544, 565-66 (1981).

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Defendants/Appellees facts, under the 2006 and 2009 School District and Tribe's consensual agreements, allow these cases to easily fit within both of the *Montana* exceptions. In the first exception, the Tribe and the School District have entered into a Plan of Operations agreement to comply with tribal, state, and federal law. (Plan of Operations, Apps. 42 and 47). Therefore, a consensual relationship exists through the Plan of Operations agreement; which allows these cases to fit squarely within the plain language of the first *Montana* exception.

In the second exception, Defendants/Appellees are all employees of the School District. Employment, regardless of the location has a direct impact on the economic security and health and welfare of any tribe and its tribal membership. The second exception of *Montana* is easily met given the fact unemployment remains at 40% and higher on the Reservation.

A. A Plan of Operations was Signed by the School District and the Tribe In 2006 and 2009 Which Meets the Requirements of the First Montana Exception.

On two separate occasions, 2006 and 2009, the Tribe and the School District entered into consensual agreements titled Plan of Operations. The Plan of Operations allowed the School District to educate Indian children within the exterior boundaries of the Reservation and to operate schools situated on tribal trust lands located within the exterior boundaries of the Reservation. The School

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District argues that it cannot freely enter into a contractual relationship with the Tribe, thus negating the first *Montana* exception. This argument calls into question the School District's very purpose on tribal lands. The School District entered into the consensual contractual agreement with the Tribe for the purpose of working with the Tribe on tribal trust land and to mutually share the responsibility for educating Indian students residing on or near the Reservation. The School District argues it did not have the discretion to enter into the Plan of Operations with the Tribe. The School District's argument it was "mandated to educate all children living in the state" pursuant to the State Constitution is not compelling as it could have easily provided education outside of the Reservation just a couple of miles away.

The School District and Tribe entered into the Plan of Operations, creating a contractual relationship on two separate occasions, 2006 and 2009, to educate students on the Reservation. The School District's conduct and action fits squarely within the first *Montana* exception.

The School District argues the first *Montana* exception only applies to private parties who freely enter into agreements with tribes. This argument is not accurate. In *Nevada v. Hicks*, 533 U.S. 353 (2001), the Supreme Court noted, "[w]hether contractual relations between State and Tribe can expressly or

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impliedly confer tribal regulatory jurisdiction over nonmembers – and whether such conferral can be effective to confer adjudicative jurisdiction as well – are questions that may arise in another case, but are not at issue here." *Id*. at 372. There is no broad-sweeping rule that a state entity or political subdivision cannot be sued in Tribal Court. Further, *Hicks* did not apply the *Montana* exceptions. In *Hicks*, the Court merely looked at tribal ownership and determined that tribal ownership of land was not enough to support tribal jurisdiction; the jurisdictional issue needed to be looked at within the context of whether tribal jurisdiction was "necessary to protect tribal self-government or to control internal relations." *Id*. at 360.

This Eighth Circuit has concluded that "[i]t is not 'plain' that a tribal court lacks authority to exercise jurisdiction over tort claims closely related to contractual relationships between Indians and non-Indians on matters occurring on tribal lands." *DISH Network Service L.L.C. v. Laducer*, 725 F.3d 877, 885 (8th Cir. 2013). The ownership status of land is simply a factor courts must consider in determining the propriety of tribal jurisdiction. *Hicks*, 533 U.S. at 360. Here, not only is the School District entirely on tribal trust land, but all of the people involved are believed to be tribal members who are responsible for the education of Indian children. All of the interests at stake are tribal in nature.

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The School District also argues that a School District cannot "[a]uthorize an agreement that enlarges or diminishes the jurisdiction over civil or tribal governments located in North Dakota," and thus the School District is prohibited from submitting itself to the jurisdiction of the Tribal Court. N.D.C.C. Sec. 54-40.2-08(1). The events arising from this suit do not enlarge nor diminish jurisdiction over civil or tribal governments in North Dakota. The Plan of Operations simply calls for applicable law to govern. (Plan of Operations 2009, Apps 42 & 47). This is hardly an expansion or limitation of jurisdiction.

The Belcourt School is the only school on the Reservation. If the School District had not entered into the Plan of Operations with the Tribe, there would be no need for the existence of the School District. The State could have funneled State education funds to the Tribe through a compact, similar to a state/tribal gaming compact without the School District. The School District freely entered into a contractual agreement, twice, with the Tribe to educate students on the Reservation. Such a fact unquestionably fits squarely into the first *Montana* exception.

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B. The School District's Actions, all of these Cases, have a Direct Effect on the Tribe's Political Integrity, Economic Security, and Health and Welfare.

The School District's actions on Defendants/Appellees' individual employment has a significant has an individual and combined impact on or direct effect on the Tribe's political integrity, economic security, and health and welfare as a whole. The School District actions meet the second exception of *Montana*. Nevertheless, the School District argues that because of the State interest involved in these cases, providing a general and uniform public education to Indian tribal members on the Reservation, Tribal Court lacks jurisdiction and these cases must be tried in federal court.

The School District cited cases with substantially different state interests than the state interest at issue here and in each of those cases, there was and absence of contractual agreements between the Tribe and opposing party. For example, the state interest in *Hicks*, protecting state law enforcement officers who entered tribal land to execute a state search warrant, are very different than the state and tribal interests at stake in these cases. Here, the School District entered into a Plan of Operations amounting to a consensual contract to abide by tribal laws. Those tribal laws established the Tribal Court to adjudicate differences on

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the Reservation. Defendants/Appellees have filed a law suit in Tribal Court to protect there employment rights/interests against the School Board in Tribal Court.

With the exception of the School District, all the people and children involved and affected by these cases are tribal members. The School District through the Plan of Operations agreed to regulate or conduct its activities pursuant to tribal law. The Tribe in this case is not trying to regulate the School District. The Tribal Court is simply enforcing a consensual agreement between the School District and the Tribe. While a Tribe's efforts to regulate nonmembers are "presumptively invalid," *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 330 (2008), the Tribe is merely trying to exercise its jurisdiction in a matter that was agreed upon and inherently tribal in nature.

Tribal self-government is at issue in this case. The School District has reaped benefits by being on tribal trust lands, yet the School District now seeks to elevate itself above the very tribal laws which it agreed to abide by in the Plan of Operations. The Tribal Court of Appeals ruled schools may enjoy all privileges and immunities of the Tribe. *Keplin, et. al. v. Ojibwa Indian School, et. al.*, TMAC-09-020. However, the immunity is not carte blanche as tribal agents may not exceed their lawful authority and disregard tribal law. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 39, at 59 (1978); *Baker Elec. Co-op, Inc v. Chaske*, 28 F.2d

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1466, 1471-2 (8th Cir. 1994); *Tenneco Oil Co. v. Sac and Fox Tribe*, 725 F.2d 572, 574-75 (10th Cir. 1984). Defendants/Appellees asks this Court to focus on the School District's actions which exceeded Tribal authority while serving as agents or co-educators of the Tribe and people. The School District's actions show a blatant disregard of tribal and Federal law by failing to protect Defendants/Appellees' employment rights and afford them equal protection under tribal laws. Such an action is in direct violation of the Plan of Operations and Defendants/Appellees's rights. Defendants/Appellees should be afforded the opportunity to protect their rights in a familiar forum, such as Tribal Court.

Moreover, taking these cases out of Tribal Court and into a state or federal court would infringe on tribal sovereignty. Taking these cases into an forum other than Tribal Court is going against the federal policy of promoting tribal self-government. The U.S. Supreme Court in *Williams v. Lee*, held that a state action would infringed on tribal sovereignty. *Williams* said state jurisdiction is prohibited if it will "undermine the authority of tribal courts over reservation affairs and hence would infringe on the right of Indians to govern themselves." *Williams v. Lee*, 358 U.S. 217, 223 (1959).

If Tribal Court lacks jurisdiction in these cases, Defendants/Appellees, who have legitimate grievances, may be left without a forum and recourse against the

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School District, conducting its activities on the Reservation. The Tribal Court should be afforded the opportunity and have the responsibility of adjudicating civil problems involving its members against the School District who has entered into a contractual arrangement to operate on tribal trust land under tribal laws. Let us not forget that "For nearly two centuries now, we have recognized Indian tribes as 'distinct, independent political communities,' qualified to exercise many of the powers and prerogatives of self-government." *Plains Commerce Bank*, 554 U.S. at 327.

IV. Exhaustion of Tribal Court Remedies.

After *Montana* was decided, the Supreme Court developed the "tribal court exhaustion" doctrine. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987). The tribal court exhaustion doctrine requires all tribal court litigants, as well as nonmembers, to exhaust their remedies in tribal court before tribal jurisdiction can be challenged in federal court.

Defendants/Appellees argue the U.S. Supreme Court in *Iowa Mutual* requires application of *National Farmers Union* and *Iowa Mutual*'s exhaustion doctrine in the lower courts. The U.S. Supreme Court in *Iowa Mutual* discovered in *National Farmers Union* a policy that "directs" a federal court toward

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nonintervention until the tribal court has determined its jurisdiction. *Iowa Mutual* found a federal policy against pitting federal courts "in direct competition with the tribal courts, thereby impairing the latter's authority over reservation affairs." Finally, the U.S. Supreme Court concluded that "[a]djudication of such matters by any non-tribal court also infringes upon tribal law-making authority, because tribal courts are best qualified to interpret and apply tribal law." Defendants/Appellees argue the tribal court exhaustion doctrine is more akin to comity. *Iowa Mutual*.

In applying *Iowa Mutual*, the Eight Circuit said, "principles of comity require that tribal court remedies be exhausted before a federal district court should consider relief in a civil case regarding tribal-related activities on reservation land." *Krempel v. The Prairie Island Indian Community*, 125 F.2d 621, 622 (8th Cir. 1997). (citing *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 845 (1971); *Nat'l Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845 (1985); *Bruce H. Lien v. Three Affiliated Tribes*, 93 F. 3d 1412 (8th Cir. 1996). Case law mandates tribal court jurisdiction and the exhaustion of tribal court remedies must be completed, if applicable. See, *Gaming World Intl. v. White Earth Band of Chippewa Indians*, 317 F. 2d 840 (8th Cir. 2003); *National Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845 (1985); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987); *Duncan Energy Co. v. Three Affiliated Tribes*, 27 F.

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3d 1294 (8th Cir. 1994); *Bruce H. Lien v. Three Affiliated Tribes*, 93 F.3d 1412 (8th Cir. 1996); *Montana v. United States*, 450 U.S. 544 (1981). Further, the ND Supreme Court decided, in *Gustafson v. Poitra*, lease agreements between nonmembers and enrolled members within the exterior boundaries of the Reservation required tribal court exhaustion. *Gustafson v. Poitra*, 800 N.W. 2d 842 (N.D. 2011).

The United States Supreme Court has held that absent a cause for immediate federal court intervention, "a federal court should stay its hand 'until after the tribal court has had a full opportunity to determine its own jurisdiction.'" *Strate v. A-1 Contractors*, 520 U.S. 438, 449 (internal citations omitted). The Supreme Court *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Indians*, explained:

> "Our cases have often recognized that Congress is committed to a policy of supporting tribal self government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge. *National Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845 (1985)."

Allowing the School District suit to proceed in federal court will needlessly multiply the proceedings over this dispute arising on the Reservation. The Tribal forum has authority under U.S. Supreme Court precedent such as *LaPlante* and *Lien v. Three Aff. Tribes*. Exhaustion of Tribal Court remedies is required because

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Tribal Court jurisdiction plainly exists under *Montana* and *Strate*, and Tribal Court exhaustion would assist to expedite final judgment of this dispute by preventing waste of time, effort, and judicial resources.

Case law requires a Tribal forum. *Duncan Energy v. Three Affiliated Tribes*, 27 F. 2d 1341 (8th Cir. 1994) (non-member oil company sued over tribal employment laws and oil tax; tribal forum deemed proper place to resolve disputes arising on the Reservation). The Tribal Court has the ability to exercise jurisdiction to resolve this matter. This is an important case for the Tribal Court to adjudicate. The School District agreed to obey the Plan of Operations Agreement in accordance with Tribal law and to resolve disputes in a tribal forum. Because the federal court action will not only infringe upon tribal sovereignty, but federal court action will also serve to duplicate and delay the legal proceedings in these cases. This Court should dismiss this case and allow it to continue in Tribal Court to avoid such duplication and delay.

CONCLUSION

Tribal authority over the activities of its members as well as its schools is an important part of Tribal Sovereignty and civil jurisdiction presumptively lies with the Tribal Court, unless affirmatively limited by a specific treaty or federal statute. "[T]ribal courts are competent law-applying bodies, the tribal court's

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determination of its own jurisdiction is entitled to 'some deference'." *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 808 (9th Cir. 2011) (quoting *FMC v. Shoshone-Bannock Tribes*, 905 F.2d 1311, 1313 (9th Cir. 1990)). For the above stated reasons, Defendants/Appellees requests that this Court declare the Turtle Mountain Tribal Court has authority over this action. A ruling should issue that requires a tribal forum to resolve the suit, pending in Tribal Court.

Dated this 29th day of May, 2014.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document, including all headings, footnotes, and quotations, but excluding summary of the case, the table of contents, table of authorities, any addendum containing statutes, rules or regulations, and any certificates of counsel, contains 3,885 words, as determined by the word count of the word-processing software used to prepare this document, specifically Microsoft Word 2007 in Times New Roman 14 point font, which is no more than 14,000 words permitted under Fed.R.App.P. 32(a)(7)(B)(I).

/s/ Don G. Bruce

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CIRCUIT RULE 28A(h) CERTIFICATION

The undersigned hereby certifies that I have filed electronically, pursuant to Circuit Rule 28A(h), a version of the brief in non-scanned PDF format. I hereby certify that the file has been scanned for viruses and that it is virus-free.

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The undersigned hereby certifies that on May 29, 2014, an electronic copy of the Brief of Defendants-Appellees Ella Davis, Mike and Judy Nelson, Bruce Allard, Martin Desjarlais, Jeff Laducer, Chad Marcellais, Robert St. Germaine and Steve Herman was filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. The undersigned also certifies that the following participants in this case are registered CM/ECF users and that service of the Brief will be accomplished by the CM/ECF system:

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